

Gender balance among non-executive directors of companies listed on stock exchanges

2012/0299(COD) - 14/11/2012 - Legislative proposal

PURPOSE: ensuring more balanced representation of men and women among non-executive directors of companies listed on stock exchanges.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: company boards in the EU are characterised by persistent gender imbalances, as evidenced by the fact that only **13.7% of corporate seats in the largest listed companies are currently held by women (15% among non-executive directors)**. Progress in increasing the presence of women on company boards has been very slow, with an average annual increase in the past years of just 0.6 percentage points.

The divergence or the absence of regulation at national level does not only lead to the discrepancies in the number of women among executive and non-executive directors and different rates of improvement across Member States, but also poses barriers to the internal market by imposing divergent corporate governance requirements on European listed companies.

- The European Commission reaffirmed its support for an increased participation of women in positions of responsibility, both in its [Women's Charter](#) and its [Strategy for Equality between Women and Men 2010-2015](#).
- In the **European Pact for Gender Equality 2011-2020**, adopted on 7 March 2011, the Council acknowledged that gender equality policies are vital to economic growth, prosperity and competitiveness and urged action to promote the equal participation of women and men in decision-making at all levels and in all fields.
- The European Parliament, in its resolutions of [6 July 2011](#) and [13 March 2012](#), called upon companies and Member States to increase female representation of women in decision-making bodies and invited the Commission to propose legislative quotas to attain the critical threshold of 30 per cent female membership of management bodies by 2015 and 40 per cent by 2020.
- The **European social partners** have reaffirmed their commitment to further action in this area in their work programme for 2012-2014.

IMPACT ASSESSMENT: the Commission analysed **five policy options**:

- **Option 1:** the baseline scenario (i.e. no further action at EU level);
- **Option 2:** a Commission Recommendation encouraging Member States to achieve the objective of at least 40% of board members of each gender by 2020;
- **Option 3:** a Directive introducing a binding objective of at least 40% of each gender by 2020 for non-executive directors;
- **Option 4:** a Directive introducing a binding objective of at least 40% of board members of each gender by 2020 for non-executive directors and a flexible objective for executive directors, which would be set by the companies themselves;
- **Option 5:** a Directive introducing a binding objective of at least 40% of board members of each gender by 2020 for both executive and non-executive directors.

The outcome of the comparison of the consequences of the different policy options was that (i) binding measures are more effective in meeting the policy objectives than non-binding measures, (ii) measures

that target both executive and non-executive board members are more effective than measures only targeting one group and (iii) binding measures will generate more societal and economic benefits than non-binding measures. **The proposal is therefore based on Option 4.**

LEGAL BASIS: Article 157(3) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the purpose of the proposal is to substantially increase the number of women on corporate boards throughout the EU by setting a **minimum objective of a 40% presence of the under-represented sex among the non-executive directors** of companies listed on stock exchanges and by requiring companies with a lower share of the under-represented sex among the non-executive directors to introduce pre-established, clear, neutrally formulated and unambiguous criteria in selection procedures for those positions in order to **attain that objective by 1 January 2020**. A shorter deadline for achieving the objective (1 January 2018) is set for listed companies which are **public undertakings**.

The proposal:

- specifies the **method of calculation** of the exact number of non-executive director positions necessary to meet the 40% objective;
- imposes a **preference rule** with the aim of meeting the objective: in the presence of equally qualified candidates of both sexes, priority shall be given to the candidate of the under-represented sex unless an objective assessment taking account of all criteria specific to the individual candidates tilts the balance in favour of the candidate of the other sex. This procedural requirement is necessary to ensure that the objectives comply with the case-law of the Court of Justice of the European Union concerning positive action;
- imposes a **disclosure obligation** and a burden of proof rule applicable in cases of challenges to the selection procedure by an unsuccessful candidate;
- provides for a **possibility of justifying non-compliance with the objective** where the members of the under-represented sex represent less than 10 per cent of the workforce;
- provides that the 40% objective can also be met where the members of the under-represented sex hold at least one third of all director positions, irrespective of whether they are executive or non-executive;
- imposes an obligation for listed companies to **undertake individual commitments** regarding the representation of both sexes among executive directors;
- imposes an obligation for listed companies to **provide and publish information on the gender composition** of their boards;
- imposes on listed companies which fail to meet the objectives concerning the non-executive directors or commitments concerning executive directors an additional obligation to **explain** the reasons and to include the description of measures taken and planned in order to meet the objectives or commitments in the future;
- obliges Member States to lay down rules on **sanctions** applicable in case of breach of this Directive.

BUDGETARY IMPLICATION: the proposal has no implications for the Union budget.